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# TRANSCRIPT OF RECORD

## Supreme Court of the United States

**OCTOBER TERM, 1941**

## No. 252

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ALLEN-BRADLEY LOCAL No. 1111, UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA, ET AL., APPELLANTS,

*vs.*

WISCONSIN EMPLOYMENT RELATIONS BOARD AND ALLEN-BRADLEY COMPANY

---

APPEAL FROM THE SUPREME COURT OF THE STATE OF WISCONSIN

---

**FILED JULY 10, 1941.**

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# IN SUPREME COURT OF WISCONSIN

AUGUST TERM, 1940

No. 213

ALLEN-BRADLEY LOCAL NO. 1111, UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA, Fred Wolter, Esther Kusmierek, Esther Greenemeier, Sophie Koscierski, Frances Chandek, Agnes Tanko, Harry Rose, Dan Roknich, Tony Calabresa, Edward Okulski, Peter Blazek, Eilif Tomte, Edward Larson and Mike Demski, Appellants,

vs.

WISCONSIN EMPLOYMENT RELATIONS BOARD and ALLEN-BRADLEY COMPANY, a Wisconsin Corporation, Respondents

## Case

[fol. 2] IN CIRCUIT COURT OF MILWAUKEE COUNTY

PETITION FOR REVIEW OF "FINAL ORDER" OF THE WISCONSIN EMPLOYMENT RELATIONS BOARD DATED FEBRUARY 1, 1940

(Omitting formal parts)

The petitioners above, Allen-Bradley Local No. 1111, United Electrical, Radio and Machine Workers of America, a labor organization, Fred Wolter, Esther Kusmierek, referred to in the final order as "Esther Kuzmerek," Esther Greenemeier, referred to in the final order as "Esther Greenmeier," Sophie Koscierski, referred to in the final order as "Sophie Kozcierski," Frances Chandek, Agnes Tanko, Harry Rose, Dan Roknich, Tony Calabresa, referred to in the final order as "Tony Calabreesa," Edward Okulski, referred to in the final order as "Edward O'Kulski," Peter Blazek, Eilif Tomte, referred to in the final order as "Eilif Tompte," Edward Larson, and Mike Demski, referred to in the final order as "Mike Dempski," by their attorney, Max E. Geline, respectfully petition this Court for review of the "final order" duly made and entered by the Wisconsin Employment Relations Board (hereinafter referred to as the "Wisconsin Board"), on the 1st day of

February, 1940, said final order being made and entered in proceedings entitled, "Allen-Bradley Company, complainant, vs. Allen-Bradley Local No. 1111, United Elec- [fol. 3] trical, Radio and Machine Workers of America, respondent," case No. 6; Cw-1, Decision No. 4A. Said petitioners in filing this petition for review of the final order do hereby reserve all rights of said petitioners by reason of the special appearance heretofore made in the original proceedings before said Wisconsin Board on or about the 19th day of June, 1939, and further reserve all objections made and entered in the proceedings to the jurisdiction of the Wisconsin Board in the aforementioned proceedings, and do not, by these proceedings, for review, in any manner, appear generally or submit to the jurisdiction of the Wisconsin Board over the petitioners herein, and, further, reserve all rights arising by reason of appearances, objections and oral and written pleadings and motions filed by said petitioners in the aforementioned proceedings. With the aforementioned reservations of rights of said petitioners, petitioners, in support of said petition for review herein, state the following as the grounds upon which a review is sought:

1. The petitioner Union is a labor organization consisting of employees of the Allen-Bradley Company, and as such is the exclusive representative of employees in production departments in an agreed-upon bargaining unit for purposes of collective bargaining with the Allen-Bradley Company with respect to matters of wages, hours, working conditions and other terms and conditions of employment, pursuant to Section 9 (a) of the National Labor Relations Act.

[fol. 4] 2. That the Allen-Bradley Company is engaged in the manufacture of electrical control equipment and radio parts in the City of Milwaukee, Wisconsin, employing approximately seven hundred (700) persons, and, as such, is engaged in interstate commerce within the meaning of the National Labor Relations Act, and is subject to the jurisdiction of the National Labor Relations Act.

3. The petitioner Union, Allen-Bradley Local 1111, United Electrical, Radio and Machine Workers of America, and the members thereof who are employees of the Allen-Bradley Company, including the named petitioners herein,

found guilty of alleged unfair labor practices by the respondent, in the final order aforementioned, are each and all entitled to all the rights and benefits, as employees of said Allen-Bradley Company, established and created under and pursuant to the terms and provisions of the National Labor Relations Act.

4. That the National Labor Relations Act, 49 Statutes 449, is a Federal Law enacted by Congress, pursuant to the authority delegated to Congress by Article I, Section (8) of the Constitution of the United States, to regulate interstate commerce. That the purpose of said act was and is to diminish the causes of labor disputes burdening or obstructing interstate and foreign commerce by encouraging the procedure of collective bargaining, and for other purposes set forth in Section (1) of said act.

[fol. 5] 5. That the Congress of the United States, in enacting the National Labor Relations Act, purported to and did regulate the rights and duties of employers and employees and labor organizations with respect to, among other matters, the rights of employees to self-organization and collective bargaining, the rights of employees, whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice and who has not obtained any other regular and substantially equivalent employment, to continue and remain employees of employer subject to said National Labor Relations Act. That said act, further, created the National Labor Relations Board which is empowered in said act to prevent any person from engaging in unfair labor practices affecting commerce; that the power so conferred upon said Board is exclusive. That, in general, said National Labor Relations Act further regulates the rights of employees to self-organization and designation of representatives of their own choosing and prohibits employers from engaging in unfair labor practices set forth in section 8 of said act. That the purpose of said act is to regulate employer-employee relations with respect to matters relating to collective bargaining for the purpose of encouraging the practice and procedure of collective bargaining by protecting the exercise by workers of full freedom of association, self-organization and designation of representatives of their own choosing, for the purpose of negotiating the

terms and conditions of their employment or other mutual aid or protection.

[fol. 6] 6. That in pursuance of said policy said National Labor Relations Act provides and defines "employees" of an employer, as follows:

"Definitions, Section 2. When used in this act—Subsection (3), the term 'employee' shall include any employee and shall not be limited to the employees of a particular employer, unless the act explicitly states otherwise and shall include any individual whose work has ceased as a consequence of, or in connection with any current labor dispute, or because of any unfair labor practice and who has not obtained any other regular and substantially equivalent employment . . . ."

7. That under and pursuant to the terms and provisions of said National Labor Relations Act and, particularly, section 2, subsection (3) thereof, the named individual petitioners herein, at all times set forth in the final order, were and still are employees of the Allen-Bradley Company, even though they had, as individuals, ceased their work for said Allen-Bradley Company, as a consequence of, or, in connection with, the current labor dispute which commenced on May 11, 1939, and continued to and including August 4, 1939.

8. That as such employees, said petitioners, under the National Labor Relations Act, have a present lawful right to employment at said Allen-Bradley Company, with all the rights and benefits resulting to said employees, arising from seniority and other rights, without any regard to the fact that each of said employees ceased their work from May 11, 1939, to August 4, 1939, by reason of the aforementioned strike.

[fol. 7] 9. That the Wisconsin "Employment Peace Act," enacted as Chapter 57 of the Laws of 1939, Chapter 111 of the Wisconsin Statutes of 1939, is a general law passed by the Wisconsin Legislature which, in general, seeks to regulate the subject of rights and duties of employers and employees and labor organizations engaged in interstate commerce and intrastate commerce, with reference to matters of self-organization of employees for purposes of collective bargaining, and collective bargaining between employers and employees and similar related matters.

10. That, among other matters, said Wisconsin "Employment Peace Act," in general, defines the status of employees and sets forth unfair labor practices for employers, employees and labor organizations, including employers, employees and labor organizations subject to the National Labor Relations Act. Section 111.02, Subsection (3) of said Wisconsin Act defines an employee as follows:

"111.02. Definitions. When used in this chapter: (3) The term 'employe' shall include any person, other than an independent contractor, working for another for hire in the state of Wisconsin, in a non-executive or non-supervisory capacity, and shall not be limited to the employes of a particular employer unless the context clearly indicates otherwise; and shall include any individual whose work has ceased solely as a consequence of or in connection with any current labor dispute or because of any unfair labor practice on the part of an employer and (a) who has not refused [fol. 8] or failed to return to work upon the final disposition of a labor dispute or a charge of an unfair labor practice by a tribunal having competent jurisdiction of the same or whose jurisdiction was accepted by the employe or his representative, (b) who has not been found to have committed or to have been a party to any unfair labor practice hereunder, (c) who has not obtained regular and substantially equivalent employment elsewhere, or (d) who has not been absent from his employment for a substantial period of time during which reasonable expectancy of settlement has ceased (except by an employer's unlawful refusal to bargain) and whose place has been filled by another engaged in the regular manner for an indefinite or protracted period and not merely for the duration of a strike or lockout; but shall not include any individual employed in the domestic service of a family or person at his home or any individual employed by his parent or spouse or any employe who is subject to the federal railway labor act."

11. That under and pursuant to section 111.02, subsection (3) (b) employees who have been found to have committed or to have been a party to any unfair labor practices lose their status as employees. That the unfair labor practices therein referred to are contained in section 111.06, subsection (2) (a) to (j), inclusive, and are as follows:

"(a) To coerce or intimidate an employe in the enjoyment of his legal rights, including those guaranteed in sec-

[fol. 9] tion 111.04, or to intimidate his family, picket his domicile, or injure the person or property of such employe or his family.

"(b) To coerce, intimidate or induce any employer to interfere with any of his employes in the enjoyment of their legal rights, including those guaranteed in section 111.04, or to engage in any practice with regard to his employes which would constitute an unfair labor practice if undertaken by him on his own initiative.

"(c) To violate the terms of a collective bargaining agreement (including an agreement to accept an arbitration award).

"(d) To refuse or fail to recognize or accept as conclusive of any issue in any controversy as to employment relations the final determination (after appeal, if any) of any tribunal having competent jurisdiction of the same or whose jurisdiction the employes or their representatives accepted.

"(e) To co-operate in engaging in, promoting or inducing picketing, boycotting or any other overt concomitant of a strike unless a majority in a collective bargaining unit of the employes of an employer against whom such acts are primarily directed have voted by secret ballot to call a strike.

"(f) To hinder or prevent, by mass picketing, threats, intimidation, force or coercion of any kind the pursuit of any lawful work or employment, or to obstruct or interfere with entrance to or egress from any place of employment, or to obstruct or interfere with free and uninterrupted use [fol. 10] of public roads, streets, highways, railways, airports, or other ways of travel or conveyance.

"(g) To engage in a secondary boycott; or to hinder or prevent, by threats, intimidation, force, coercion or sabotage, the obtaining, use or disposition of materials, equipment or services; or to combine or conspire to hinder or prevent, by any means whatsoever, the obtaining, use or disposition of materials, equipment or services; or to combine or conspire to hinder or prevent, by any means whatsoever, the obtaining, use or disposition of materials, equipment or services, provided, however, that nothing herein shall prevent sympathetic strikes in support of those in

similar occupations working for other employers in the same craft.

"(h) To take unauthorized possession of property of the employer or to engage in any concerted effort to interfere with production except by leaving the premises in an orderly manner for the purpose of going on strike.

"(i) To fail to give the notice of intention to strike provided in section 111.11.

"(j) To commit any crime or misdemeanor in connection with any controversy as to employment relations."

12. That the petitioners, named in the findings of facts and in paragraph 2 of the conclusions of law of the final order, have, by reason of the fact that said petitioners are named therein as having been guilty of unfair labor practices, as a legal consequence, lost their status as employees of the Allen-Bradley Company in so far as and, if, the Wis- [fol. 11] consin Act is applicable to said named employees and to the Allen-Bradley Company.

13. That the named petitioners, Fred Wolter, Esther Kusmierek, Esther Greenemeier, Sophie Koscierski, Frances Chandek, Agnes Tanko, Harry Rose, Dan Roknich, Tony Calabresa, Edward Okulski, Peter Blazek, Eilif Tomte, Edward Larson and Mike Demski, at all times have been and now are employees of the Allen-Bradley Company under and pursuant to the terms and provisions of the National Labor Relations Act.

14. That Section 111.02, Subsection (3) of the Wisconsin Act, and Section 111.06, Subsection (2) (a) to and including (j), of said Wisconsin Act, are repugnant to and in conflict with Section 2, Subsection (3) of the National Labor Relations Act, and the conflict and repugnance between said provisions of said Wisconsin Act and said National Labor Relations Act is so substantial and drastic that said provisions of said two acts cannot consistently stand together with respect to said petitioners so named in said final order of the Board, and, by reason thereof, said provisions are void and unconstitutional in so far as applicable to petitioners, who are subject to the regulations provided in the National Labor Relations Act.

15. That by reason of said conflict and repugnance between said two acts, with respect to said matter, the Wis-

consin "Employment Peace Act" is superseded by said National Labor Relations Act and the exercise by said Wisconsin Employment Relations Board of jurisdiction in the [fol. 12] matter of finding the named petitioners guilty of unfair labor practices and thereby terminating their status as employees of the Allen-Bradley Company is null and void.

16. That Section 111.02, Subsection (3) and Section 111.06, Subsection (2) (a) to (j), inclusive of said Wisconsin Act, in so far as applicable to said named petitioners herein, is void and unconstitutional by reason of the interference and conflict in the terms and provisions of said two acts, and, further, by reason of the fact that the aforementioned provisions of said Wisconsin Act constitute an interference with a federal law regulating interstate commerce in violation of Article I, Section (8), and Article II, Section (6) of the Constitution of the United States.

17. That the final order of the Wisconsin Board, in so far as said order found said named employees of the Allen-Bradley Company, petitioners herein, whose names appear in paragraph 2 of the conclusions of law of said final order, to be guilty of unfair labor practices defined and set forth in Section 111.06, Subsection (2) (a) to and including (j), of the Wisconsin Act, and thereby terminated the employee status of said named persons, is void and unconstitutional for the reason that the order of said Board respecting said matter constitutes an interference with the rights of said named employees of the Allen-Bradley Company, established by Congress under Section 2, Subsection (3), of said National Labor Relations Act to be and remain employees of said company, and attempts to terminate a legal status [fol. 13] established by Congress under said National Act, for the express purpose of benefiting the Allen-Bradley Company, to which benefits said company is not entitled under said National Act, and as such constitutes an interference with a law regulating commerce in violation of Article I, Section (8), and Article II, Section (6), of the Constitution of the United States.

18. That said named employees, petitioners herein, would be and are employees of said Allen-Bradley Company under said National Labor Relations Act even if said named employees committed the acts which said respondent found

them to have committed in said final order, and the Wisconsin Board, at no time, nor in any manner, had the jurisdiction to enforce said Wisconsin Act against said named employees for the reason that said Wisconsin Act and the whole thereof was and is inapplicable to said named employees, and the final order, in so far as it is applicable to said employees, and each of them, is null and void and unconstitutional for the reason that same is violative of the rights established by Congress under the National Labor Relations Act for the particular benefit of said employees.

19. That Congress, in enacting the National Labor Relations Act, granted to the National Labor Relations Board the exclusive power to determine, in effectuating the policies of said act, whether misconduct of employees in the course of a labor dispute shall bar such employees from the continuance of their status as employees for and during the period of said strike and thereafter. That the order [fol. 14] of the Wisconsin Board respecting the named petitioners herein constitute an interference with the exercise by said National Labor Relations Board of the exclusive and original powers and jurisdiction given to it by Congress in enacting said National Labor Relations Act, and, by reason thereof, said order of said Wisconsin Board is void and unconstitutional.

20. Petitioners further allege that said final order is wholly and completely null and void and of no force and effect as applied to said petitioners herein for the reason that the Wisconsin "Employment Peace Act," as applied to said Allen-Bradley Company, the petitioner Union and the employees of said Allen-Bradley Company who are members of said Union, is void and unconstitutional for the reason that said act, as applied to the above parties, who are engaged in interstate commerce and subject to the National Labor Relations Act, is in conflict with and repugnant to the National Labor Relations Act.

21. That both the Wisconsin Act and the National Labor Relations Act attempt to regulate the same general subject of employer-employee rights and duties and regulate collective bargaining relations between employers and employees. That Congress, in enacting the National Labor Relations Act, has pre-empted the subject covered by said National Labor Relations Act in the exercise of its powers to regulate interstate commerce, and that the state is with-

out any present authority or jurisdiction to regulate, in any [fol. 15] manner, the same general subject as covered by said National Labor Relations Act.

22. Petitioners further allege that even if it were held that the State of Wisconsin has jurisdiction in the exercise of its police powers to enact a law regulating the same subject as covered by the National Labor Relations Act, the Wisconsin Employment Relations Act is, in its main and major terms and provisions, so in conflict with and repugnant to the terms and provisions of the National Labor Relations Act and the intent of Congress in enacting said federal law that the two acts cannot be reconciled or consistently stand together; that, in consequence thereof, the Wisconsin Employment Peace Act, so far as the same is applicable to parties engaged in interstate commerce and subject to the National Labor Relations Act, is void and unconstitutional and constitutes an illegal and unconstitutional interference with the application and administration of the National Labor Relations Act, in so far as applicable to the petitioners herein and the Allen-Bradley Company, and that said Wisconsin Act, by reason thereof, is void and unconstitutional in violation of Article I, Section (8), and Article II, section (6), of the Constitution of the United States.

23. That the Wisconsin "Employment Peace Act" in its major terms and provisions constitutes an indivisible and integrated plan of regulation of the subject of employer and employee rights and duties and collective bargaining, that each and every portion thereof was an inducement for the enactment of other portions thereof, and that the Legis- [fol. 16] lature would not have enacted portions thereof, such as employer and employee unfair labor practices unless the other subjects of regulation therein contained were valid and applicable to the parties herein. That as a result the entire Wisconsin Act, as applied to employers and employees engaged in interstate commerce and the parties to this action, is wholly null and void and unconstitutional by reason of the fact that same is in conflict with said National Labor Relations Act and the Wisconsin Board was wholly without any jurisdiction to issue a valid final order, and by reason thereof the final order so issued is wholly null and void and of no effect.

24. Petitioners further allege that Section 111.06, subsection (3) of said Wisconsin Act, is in conflict with, violative of and an interference with the intent of Congress in enacting the National Labor Relations Act and constitutes an interference with the exercise by Congress of its powers to regulate interstate commerce. That said final order finding the petitioner Union guilty of unfair labor practices, as therein contained in paragraph 1 of the conclusions of law is void and unconstitutional, for the reason that same constitutes an interference with the National Labor Relations Act and the right of the petitioners under said National Labor Relations Act, and, further, the same constitutes an unlawful interference with the exercise by Congress of its powers to regulate the subject covered by said National Labor Relations Act, in that Congress, in enacting said National Labor Relations Act, intended that [fol. 17] employees and labor organizations should not be subject to unfair labor practices such as are contained in said Wisconsin Act, and on which said order is based.

25. Petitioners further allege that that portion of the final order of said Wisconsin Board ordering said petitioners to cease and desist from picketing the domiciles of any employees of the company, contained in section 1, subsection (e), of the order, constitutes an unconstitutional and arbitrary interference with the rights of the petitioners' Union and its members to the exercise of the right of free speech and to otherwise advocate their cause in a lawful and peaceful manner upon the public highways and streets; that said order, and Section 111.06, Subsection (2) (a) of said Wisconsin Act, on which the prohibition against said home picketing is based, is void and unconstitutional by reason of said act and the portion thereof referred to and the order as made and entered with respect to home picketing being in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States, and Article I, Subsections (1), (3) and (4) of the Constitution of the State of Wisconsin.

26. Petitioners further allege that the final order should be dismissed for the reason that the Wisconsin Board at no time has or had jurisdiction to proceed against the petitioner Union or the members thereof named herein as petitioners. That the Wisconsin Board erred in overruling the

motions of the petitioners above to dismiss said proceedings before said Board by reason of the lack of jurisdiction [fol. 18] of said Wisconsin Board to proceed, for the reasons therein mentioned.

27. Petitioners further allege that the order as made and entered with respect to said named petitioners herein is void for the reason that said Board willfully discriminated against the named petitioners herein in designating that said petitioners have committed unfair labor practices, when the record and testimony and findings made by said Board established beyond question that all the members of said petitioner Union engaged in picketing in large numbers on the public highways around and about the premises of said Allen-Bradley Company, and that a large number of other strikers carried on home picketing in a peaceful manner, although in violation of said Wisconsin "Employment Peace Act."

28. Petitioners allege that the discrimination exercised by said Board in refusing to enforce said act against others who had committed unfair labor practices was made, particularly, for the purpose of punishing the leaders of the petitioner Union who were active in said strike, and, thereby, to undermine the standing of said petitioner Union as collective bargaining agency for employees under the National Labor Relations Act.

29. That such discrimination in the enforcement of said act is violative of constitutional due process of law, to which said petitioners are entitled. That by reason thereof the said order is, in all respects, rendered null and void and of no effect.

[fol. 19] Wherefore, petitioners pray that judgment be rendered in favor of said petitioners as follows:

1. That the final order, including the findings of fact, conclusions of law, order and all portions thereof, made and entered by the Wisconsin Emp-oyment Relations Board on the 1st day of February, 1930, be vacated, set aside and dismissed upon the merits, and that all proceedings heretofore instituted, including the original complaint filed by the Allen-Bradley Company against the petitioners herein, be dismissed for want of jurisdiction, and, further, by reason

of the fact that said Wisconsin "Employment Peace Act," as applied to petitioners herein, is void and unconstitutional.

2. For such other and further relief as may be just and equitable in the premises.

Max E. Geline, Attorney for Petitioners.

* * * * * * *

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[fol. 20] **Final Order of Wisconsin Employment Relations Board, Dated February 1, 1940**

(Omitting Formal Parts)

FINAL ORDER

In the above-entitled matter, heard by the full Board after considering all of the evidence, the arguments of counsel, and being advised in the premises, the Board made and filed, on the 13th day of July, 1939, interlocutory findings of fact, conclusions of law and order, which said interlocutory order is herewith confirmed, continued and made a part of this final order.

Having fully considered the matter, the Board now makes and files the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. That the Allen-Bradley Company is a Wisconsin corporation, engaged in the manufacturing business, its factory being located in the City of Milwaukee, Wisconsin.

2. That Allen-Bradley Local No. 1111, United Electrical, Radio and Machine Workers of America, is a labor organization composed of employes of the Allen-Bradley Company, working in the factory of said company in the City of Milwaukee, State of Wisconsin.

3. That prior to the first day of May, 1939, there had been in force a contract between the company and the Union [fol. 21] governing the terms and conditions of employment, which said contract was canceled by the Union, the cancellation being effective as of the 30th day of April, 1939.

4. That on or about the 10th day of May, 1939, a strike was called by said Union at the factory of the company after the employes of the company had voted by secret ballot ordering such strike, and that said strike was in progress during the hearing conducted by this Board.

5. That from the beginning of said strike, the Union has engaged in mass picketing at all of the entrances to the factory for the purpose of hindering and preventing the pursuit of lawful work and employment by employes of the Allen-Bradley Company who desired to engage in such lawful work or employment.

6. That after the commencement of said strike, the Union obstructed and interfered with entrance to and egress from the factory of the company, and obstructed and interfered with the free and uninterrupted use of the streets and sidewalks surrounding the factory of the company.

7. That the Union, by its officers and many of its members, threatened bodily injury and property damage to many of the employes desiring to continue their employment with the company.

8. That the Union required of persons desiring to enter the factory without interference that they obtain passes from the Union at its strike headquarters.

[fol. 22] 9. That the Union, by its officers and many of its members, picketed the domiciles of many employes desiring to continue their employment with the company.

10. That the Union, by its officers and many of its members, injured the person and property of employes of the company who desired to continue their employment with such company.

11. That Fred Wolters was, prior to the time of the strike, an employe of the Allen-Bradley Company, and president of the Union, and that by threats, force and coercion of other kinds, he attempted to intimidate and to prevent certain employes of the company who desired to continue their employment therein, from pursuing their lawful work and employment.

12. That Esther Kuzmerck, Esther Greenmeier, Sophie Kozcierski, Frances Chandek and Agnes Tanko, were prior

to the time of the strike, employes of the Allen-Bradley Company, and that by threats, intimidation, assault and force, attempted to prevent Ruth Batt, an employee of the Allen-Bradley Company, who desired to continue her employment therein, from pursuing such lawful work and employment, and that the said named persons committed an assault and battery upon the person of said Ruth Batt.

13. That Harry Rose and Dan Roknich were, prior to the time of the strike, employes of the Allen-Bradley Company, and that by threats, intimidation, assault and force, attempted to prevent one Marie Rudella, an employe of the [fol. 23] Allen-Bradley Company, who desired to continue her employment therein, from pursuing her lawful work and employment.

14. That Tony Calabreesa and Edward O'Kulski were, prior to the time of the strike, employes of the Allen-Bradley Company, and that by assault, force and coercion, attempted to prevent one Ann Cycosch, who desired to continue her employment with the Allen-Bradley Company, from pursuing her lawful work and employment.

15. That Peter Blazek, prior to the time of the strike an employe of the Allen-Bradley Company, assaulted one Anton Stanwick, an employe of the Allen-Bradley Company, and by such assault attempted to intimidate said Anton Stanwick and to prevent him from continuing his employment with the Allen-Bradley Company.

16. That Eilif Tompte and Edward Larson, prior to the time of the strike, employes of the Allen-Bradley Company, were arrested and convicted of attempting to damage property belonging to employes of the Allen-Bradley Company, who continued to work for said company during the strike, and that such misdemeanor was committed in connection with the controversy then existing between the company and the Union.

17. That Mike Dembski, prior to the time of the strike an employee of the Allen-Bradley Company, was arrested on the picket line maintained by the Union, armed with concrete rocks, and that said Dembski intended to use such rocks for the purpose of intimidating employees of the [fol. 24] company who desired to continue their employment therein, from pursuing such lawful work and employment.

## Conclusions of Law

The Board finds, as Conclusions of Law;

1. That the Union is guilty of unfair labor practices in the following respects:

a. Mass picketing for the purpose of hindering and preventing the pursuit of lawful work or employment by persons desiring employment by the Allen-Bradley Company;

b. Threatening employes desiring to pursue their lawful work and employment with the company, with bodily injury and injury to their property;

c. Obstructing and interfering with entrance to and egress from the factory of the company;

d. Obstructing and interfering with the free and uninterrupted use of the streets and public roads surrounding the factory of the company;

e. Picketing the domiciles of employees of the company.

2. That all the following named employes are guilty of unfair labor practices by reason of threats made by them to other employes, assaults committed by them upon other employes, or misdemeanors committed by them arising out of the controversy between the Union and the company as described in the findings of fact above: Fred Wolters, Esther [fol. 25] Kuzmerck, Esther Greenmeier, Sophie Kozcierski, Frances Chandek, Agnes Tanko, Harry Rose, Dan Roknich, Tony Calabreesa, Edward O'Kulski, Peter Blazek, Eilif Tompte, Edward Larson, and Mike Dembski.

Upon the basis of the foregoing findings of fact and conclusions of law, the Board, pursuant to Section 111.07 (4) of the Wisconsin Statutes, makes the following:

## Order

It is ordered that the respondent, Allen-Bradley Local No. 1111, United Electrical, Radio and Machine Workers of America, its officers, agents, successors, assigns and members, shall:

1. Cease and desist from:

a. Engaging in mass picketing at or near the plant of the company.

b. Threatening employes of the company with physical injury, property damage, or otherwise.

c. Obstructing or interfering with entrance to and egress from the factory of the company.

d. Obstructing or interfering with the free and uninterrupted use of the streets, public roads and sidewalks surrounding the factory of the company.

e. Picketing the domicile of any employe of the company.

2. Take the following affirmative action which the Board finds will effectuate the policies of the act:

[fol. 26] a. Post immediately notices to their members in conspicuous places at the Union headquarters that the Union has ceased and desisted in the manner aforesaid.

b. Notify the Board in writing forthwith that steps have been taken by the Union to comply herewith.

Given under our hands and seal at the City of Madison, Wisconsin, this 1st day of February, 1940.

Wisconsin Employment Relations Board, By Henry C. Fuldner, Chairman, L. E. Gooding, Commissioner, R. Floyd Green, Commissioner.

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IN THE CIRCUIT COURT OF MILWAUKEE COUNTY

ANSWER AND CROSS PETITION FOR ENFORCEMENT OF FINAL ORDER OF WISCONSIN EMPLOYMENT RELATIONS BOARD

(Omitting formal parts)

Now comes the respondent, Wisconsin Employment Relations Board, by John E. Martin, Attorney-General; James Ward Rector, Deputy Attorney-General, and N. S. Boardman, Assistant Attorney-General, its attorneys, and for answer to the petition in the above-entitled matter admits, denies and alleges as follows:

1. Admits paragraphs 1, 4, 6, 9 and 10.

[fol. 27] 2. Denies that the Allen-Bradley Company is engaged in interstate commerce, but admits that the business

of the company is such that said company is subject to the terms and provisions of the National Labor Relations Act.

3. Denies that the petitioning Union or the petitioning individuals have any private rights under the National Labor Relations Act.

4. Denies that the purpose of said act is as alleged in paragraph 5 of said petition.

5. Denies paragraphs 7 and 8 of said petition.

6. Admits the allegations contained in paragraph 11, except the first sentence thereof, and denies same.

7. Denies the allegations contained in paragraphs 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28 and 29.

Wherefore, this answering defendant prays that the petition be dismissed and that a judgment be entered affirming and enforcing the order complained of.

## Cross Petition

Further answering, and for a cross petition, the respondent, Wisconsin Employment Relations Board, pursuant to authority conferred upon it by the provisions of Ch. 57, Laws of 1939, respectfully petitions the Court for the enforcement of the order complained of in the petition for review. In support of this petition the Board respectfully alleges and shows:

[fol. 28] 1. That the respondent, the Wisconsin Employment Relations Board, is and at all times mentioned herein was an administrative body created by Ch. 57, Laws of 1939, and that Henry C. Fuldner is the chairman and L. E. Gooding and R. Floyd Green are commissioners or members of said Board.

2. That the Allen-Bradley Company (hereinafter referred to as the Company) is a Wisconsin corporation engaged in the manufacturing business in the City of Milwaukee, Wisconsin.

3. That the Allen-Bradley Local No. 1111, United Electrical, Radio and Machine Workers of America (hereinafter referred to as the Union) is a labor organization in which a large number of the company's factory employees are members.

4. That on June 5, 1939, a complaint was filed with the Board by the company, alleging that the Union, its officers and many of its members, had engaged in, and were then engaging in, unfair labor practices, the complaint alleging, in substance, that on or about May 10, 1939, the Union and some of its members went on strike and continued to strike from that time until the filing of the complaint; that the Union and certain of its members materially hindered and prevented by mass picketing, threats, intimidation, force and coercion, the pursuit of lawful work and employment by many of the employees of the company, and obstructed and interfered with entrance to and egress from the company's factory; that the union engaged in a concerted effort [fol. 29] to interfere with the company's production by acts and conduct other than leaving the company's premises in an orderly manner; that the Union and certain of its members coerced and intimidated various employes of the company and their families by threats and violence; that with full knowledge of the Union several of its members have committed crimes and misdemeanors in connection with the conduct of the strike, and that the Union had aided such members by furnishing, without cost to said members, bail, attorney services, and is intending to pay any fines that may be imposed upon such members for the commission of such crimes and misdemeanors; that the Union co-operated in engaging in promoting or inducing picketing and other overt concomitants of a strike without having a majority of the employes of the company in a collective bargaining unit vote by secret ballot to call a strike. The relief prayed for by the company was that an order be entered to protect the rights of the company to operate its business under conditions of law and order, to protect the rights of such of its employes who desire to continue work, to prevent the Union from intruding into the primary rights of such workers to earn a livelihood and the primary rights of the company to transact its business; and, further, that the Board ascertain and determine which of the members of the Union have committed or have been parties to any unfair labor practices, and to declare that such persons are no longer employees of the company, as defined in the Wisconsin statute.

[fol. 30] Notice of hearing was duly issued by the Board on the 6th day of June, 1939, and copies of such notice, to

which was attached a copy of the complaint, were served by registered mail on Fred W. Wolter, president of the Union; Harley O. Wright, vice-president; Ford Halvorsen, secretary, and Leo Mann, of Lines, Spooner & Quarles, attorneys for the company. Pursuant to such notice a public hearing of the charges was held at the court house in the City of Milwaukee, commencing on the 19th day of June, 1939, and continuing to the 30th day of June, 1939, before the full Board.

5. That the Board, under date of July 13, 1939, entered an interlocutory order pending its final determination, in which the said Board ordered as follows:

"It is ordered that the respondent, Allen-Bradley Local No. 1111, United Electrical, Radio and Machine Workers of America, its officers, agents, successors, assigns and members shall:

"1. Cease and desist from:

"a. Engaging in mass picketing at or near the plant of the Company and particularly shall refrain from such picketing on the streets surrounding said plant, to-wit: Greenfield Avenue, Madison Street, South First Street, and South Second Street;

"b. Threatening employes of the Company with physical injury, property damage, or otherwise;

"c. Obstructing and interfering with the entrance to [fol. 31] and egress from the factory of the Company;

"d. Obstructing and interfering with the free and uninterrupted use of the streets and public roads and sidewalks surrounding the factory of the Company;

"e. Picketing the domicile of any employe of the Company.

"2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

"a. The union may maintain a picket line at or near the premises of the Company, but shall not allow more than fifteen (15) persons to be on such picket line at any one time of the day. Of such fifteen persons, not more than six (6) shall be on any one of the streets surrounding the

plant of the Company at any one time. The pickets are not to obstruct or in any way interfere with entrance to or egress from the plant of the Company. They are not to obstruct or interfere with the free and uninterrupted use of the streets, sidewalks or public roads surrounding the factory of the Company. They are not to in any manner threaten employes or customers of the Company. They are not to endeavor to prevent anyone from entering the factory of the Company, and they are not to jeer at, revile, or call anyone entering the plant vulgar or offensive names. Such pickets are to be maintained solely for the purpose of notifying the public, employes and prospective employes, that a strike is in progress, and are limited to a number sufficient, in our opinion, to let a reasonable person know that such strike is in progress.

[fol. 32] "b. Post immediately notices to their members in conspicuous places at the Union strike headquarters, the Union meeting hall, and on each street corner around the Company's factory stating:

"1. That the Union will cease and desist in the manner aforesaid;

"2. That all picketing is to be carried on as aforesaid;

"3. That such notices remain posted for a period of at least thirty (30) days from the date of posting.

"c. Notify the Board in writing within ten (10) days from the date of the receipt of this Order what steps the Union has taken to comply therewith."

6. That the Board petitioned this Court for enforcement of said interlocutory order and that this Court, under date of January 4, 1940, duly entered judgment enforcing said interlocutory order of the Board.

7. That on February 1, 1940, the Board made and entered its final order in said matter, a copy of which said final order is attached hereto, marked "Exhibit A," and made a part hereof.

8. That the respondent Board has caused to be certified and filed with this Court the complete record in the proceedings, including all documents and papers on file in the said matter, the pleadings and testimony upon which said

order was entered, and the findings and order of the Board to which record reference is hereby made and the said record incorporated herein.

[fols. 33-49] Wherefore the Board prays that the Court enter an order confirming and enforcing the final order of the Board in this matter, dismissing the petition for review, and for such other relief as the facts and circumstances may warrant.

John E. Martin, Attorney-General; James Ward Rector, Deputy Attorney-General; N. S. Boardman, Assistant Attorney-General; Attorneys for Wisconsin Employment Relations Board.

Exhibit A—Copy of final order hereinabove set forth at pages 20-25.

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[fol. 50] In Circuit Court of Milwaukee County

Answer of Allen-Bradley Company

(Omitting formal parts)

Now comes the above-named respondent, Allen-Bradley Company, by Lines, Spooner & Quarles, its attorneys, and for answer to the petition in the above-entitled matter admits, denies and alleges as follows:

(1) Admits that petitioner Union is a labor organization consisting of employes of the Allen-Bradley Company, and that at all of the times involved in said proceedings before said Wisconsin Employment Relations Board it was the exclusive representative of employes in the bargaining unit composed of the production departments for the purposes of collective bargaining pursuant to Section 9 (2) of the National Labor Relations Act.

(2) Admits that the said company is engaged in the manufacturing business in the City of Milwaukee, employing in the neighborhood of 700 persons.

Denies that its entire business constitutes interstate commerce, but admits that its business is of such a nature that it would be subject to the terms and provisions of the National Labor Relations Act if, in a proper case and under

proper conditions, the National Labor Relations Board duly sought to subject it to the said act.

(3) Denies that the petitioning Union, or the individual members thereof, on behalf of whom petitioner acts, have any private rights, or are entitled to any private benefits, [fol. 51] under or pursuant to the National Labor Relations Act.

(4) Admits the allegations contained in paragraph 4 of the petition.

(5) Denies that the Congress of the United States enacted said act for the purposes alleged in paragraph 5 of the petition, and alleges the fact to be that the purpose of Congress in enacting said legislation and the extent to which, by said act, Congress purported to and did regulate the conduct of employers with respect to the subject matter of said legislation appears and is set out in said National Labor Relations Act. Denies that said act conferred upon the National Labor Relations Board the exclusive power to prevent any persons from engaging in unfair labor practices either affecting commerce or otherwise.

(6) Admits the allegations contained in paragraph 6 of the petition.

(7) Alleges that the petitioning Union and certain of the employes of said company who were members of said Union went out on strike on or about May 10, 1929, and that under and pursuant to the terms and provisions of said National Labor Relations Act, and particularly section 2 (3) thereof, the named individual petitioners who were among the striking employes were, at the commencement of the strike, included within the statutory definition of the term "employe," even though they were out on strike, but denies that any of said individual petitioners, except Harry Rose, are now employes of said company.

[fol. 52]. (8) Denies the allegations contained in paragraph 8 of said petition.

(9) Admits the allegations contained in paragraph 9 of said petition.

(10) Admits the allegations contained in paragraph 10 of said petition.

(11) Answering paragraph 11, denies the allegations contained in the first sentence thereof, and admits all of the other allegations contained in said paragraph 11.

(12) Denies the allegations contained in paragraphs 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28 and 29 of said petition.

(13) Denies the allegations contained in paragraph 13 of said petition, except that this answering respondent admits that said Harry Rose has not been discharged by it, but that due to lack of work available he has not yet been called back to work.

(14) Further answering, respondent denies each of the allegations contained in said petition not herein specifically admitted or qualifiedly denied.

Wherefore, this answering respondent prays that said petition be dismissed, and that a judgment be entered affirming and enforcing the said final order of the said Wisconsin Employment Relations Board made and entered on the 1st day of February, 1940.

Lines, Spooner & Quarles, Attorneys for Respondent Allen-Bradley Company.

[fol. 53] IN CIRCUIT COURT OF MILWAUKEE COUNTY

DECISION DATED JULY 16, 1940

(Omitting formal parts)

Petition of Allen-Bradley Local No. 1111, United Electrical, Radio & Machine Workers of America, and fourteen individuals, named petitioners, to review the final order of the Wisconsin Employment Relations Board, dated February 1, 1940, in proceedings entitled, "Allen-Bradley Company, complainant, against Allen-Bradley Local No. 1111, United Electrical, Radio & Machine Workers of America, respondent. The Board and respondent, Allen-Bradley Company, have interposed answers to such petition and the Board presents its cross petition for judgment confirming its final order and for its enforcement.

On July 13, 1939, the Board issued an interlocutory order in the proceedings herein involved, and on January 4, 1940, judgment confirming such interlocutory order was entered

by this Court. No material differences are discernible in the orders (interlocutory and final) except that the final order names the individual members (herein named as petitioners) and finds that they have been guilty of unfair labor practices. This additional provision of the final order, it is claimed by petitioners, in effect terminates the employe status of such named members and that it is, therefore, in conflict with and repugnant to the National Labor Relations Act, Section 2 (3). The National Labor Relations Act, it is claimed, guarantees the continuance of the employe status and that any provision in any way restricting or curtailing [fol. 54] such provision must be held to be in conflict therewith and therefore invalid and unconstitutional.

The provisions of the National Labor Relations Act referred to must be held, in the light of the decisions interpreting the act, to continue the employe status for the purpose of effectuating the clear intent of the act, which is to prevent unfair labor practices on the part of the employer from interfering with the protection afforded the employe under the act. In other words, unless the employe status is preserved, the purpose of the act may be defeated. The accomplishment of the same purpose was evident-y sought by the enactment of the following portion of Section 111.02 (3), R. S., which reads as follows:

"The term 'employe' shall include any individual whose work has ceased solely as a consequence of or in connection with any current labor dispute or because of any unfair labor practices on the part of an employer."

The portion of this section particularly complained of by petitioners herein is as follows, in defining the term "employe," among other things, this language is used:

"(b) Who has not been found to have committed or been a party to any unfair labor practice."

The intent of the National Labor Relations Act with respect to preserving the employe status and the limitation as to its scope implicit therein are set forth in N. L. R. B. v. Fansteel Corp., 306 U. S. 240; N. L. R. B. v. Mackay [fol. 55] Radio & Telegraph Co., 304 U. S. 333, 347; N. L. R. B. v. Jones & Laughlin, 301 U. S. 1, 45, 46; The Public Steel Corp. v. N. L. R. B., 107 Fed. (2d) 472; N. L. R. B. v. Stackpole Carbon Co., 105 Fed. (2d) 167.

It is clear intent of the National Labor Relations Act to preserve the employ- status wherever necessary to effectuate the purposes of the act and for that purpose only.

Furthermore the situation here presented by petition does not involve a case of employer unfair labor practices under the findings of the Board which must be held to be conclusive, as heretofore indicated by the decision in the interlocutory order, so that an actual case of conflict is not presented in any event. As was stated in W. L. R. V. v. Fred Rueping Leather Co., 228 Wis. 473, the time to resolve the question of the conflict in the administration of the two acts will be when such situation of conflict is presented.

My conclusion is that no case of conflict between the National and State Acts is presented and that Section 111.02 (b), Wisconsin Statutes must be held a valid enactment.

For the reasons already set forth in the decision of the court affirming the interlocutory order and for the further reasons herein stated, the final order of the Wisconsin Employment Relations Board must be confirmed.

Dated, July 16, 1940.

Otto H. Breidenbach, Circuit Judge.

[fol. 56] In Circuit Court of Milwaukee County

Final Judgment

(Omitting formal parts)

The above-named petitioners' petition for a review of the final order of the Wisconsin Employment Relations Board, dated the first day of February, 1940, in the above entitled matter, seeking to set aside the said order of the Board for the reasons therein assigned, the answer and cross petition of the Board seeking an order confirming and enforcing the provisions of the said order referred to and the answer of the Allen-Bradley Company, a corporation, came on to be heard before this court without a jury, pursuant to the statutory method for review and enforcement of such an order on the 29th day of March, 1940, Hon. Otto H. Breidenbach, Circuit Judge, presiding. The petitioners appeared by Max E. Geline, the respondent, Wisconsin Employment Relations Board appeared by John E. Martin, Attorney-General,

James Ward Rector, Deputy Attorney-General, and N. S. Boardman, Assistant Attorney-General, and the respondent, Allen-Bradley Company, a corporation, appeared by Lines, Spooner & Quarles.

All parties participated in the oral argument and briefs were filed on behalf of all parties and the court having heard the arguments of counsel and having given careful consideration to the briefs filed and having taken the matter under advisement and being fully and sufficiently advised in the premises, and the court having on the 16th day of July, [fol. 57] 1940, rendered and filed its written decision herein wherein judgment is directed as hereinafter adjudged;

Now, on motion of John E. Martin, Attorney-General, James Ward Rector, Deputy Attorney-General, and N. S. Boardman, Assistant Attorney-General, attorneys for the Wisconsin Employment Relations Board and Lines, Spooner & Quarles, attorneys for the Allen-Bradley Company, a corporation, and upon all the records, files, and proceedings had herein,

It Is Ordered and Adjudged, That the final order of the Wisconsin Employment Relations Board, dated the first day of February, 1940, and the findings and conclusions of said Board in the above-entitled matter be and the same hereby are in all respects sustained, confirmed and enforced.

It Is Therefore Ordered and Adjudged, That the Allen-Bradley Local No. 1111, United Electrical Radio and Machine Workers of America, its officers, agents, successors, assigns and members, shall:

1. Cease and desist from:

a. Engaging in mass picketing at or near the plant of the Allen-Bradley Company, a corporation (hereinafter referred to as the Company).

b. Threatening employes of the Company with physical injury, property damage, or otherwise.

c. Obstructing or interfering with entrance to and egress from the factory of the Company.

[fols. 58-77] d. Obstructing or interfering with the free and uninterrupted use of the streets, public roads and sidewalks surrounding the factory of the Company.

e. Picketing the domicile of any employe of the Company.

2. Take the following affirmative action:

a. Post immediately notices to their members in conspicuous places at the Union headquarters that the Union has ceased and desisted in the manner aforesaid.

b. Notify the Wisconsin Employment Relations Board in writing forthwith that steps have been taken by the Union to comply herewith.

It Is Further Ordered and Adjudged, That this judgment be and become effective and enforceable as the judgment of this court as of this date and be entered accordingly.

It Is Further Ordered and Adjudged, That the motion of the petitioners to vacate and set aside the said order be and the same hereby is denied.

Dated, August —, 1940.

By the Court.

——, Circuit Judge.

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[fol. 78] BEFORE WISCONSIN EMPLOYMENT RELATIONS BOARD

COMPLAINT OF ALLEN-BRADLEY COMPANY AGAINST ALLEN-BRADLEY UNION

(Omitting formal parts)

Now comes the above-named complainant (hereinafter sometimes called the "Company"), by Lines, Spooner & Quarles, its attorneys, and hereby files its complaint in writing, charging the above-named respondent (hereinafter sometimes called the "Union"), its officers, and many of its members, with having engaged in and with engaging in unfair labor practices, and hereby alleges and shows to the Board as follows:

(1) Complainant is a Wisconsin corporation engaged in the manufacturing business, having its principal office and plant at 1326 South Second street, in the City of Milwaukee, Wisconsin.

(2) The Union is a labor organization, in which a large number of the company's factory employes are members. The officers of the Union and their addresses are as follows:

President, Fred W. Wolters, 209 W. Scott street, Milwaukee, Wisconsin;

Vice-President, Harley O. Wright, 2640 S. Ninth street, Milwaukee, Wisconsin;

Secretary, Ford Halvorsen, 1128A W. Washington street, Milwaukee, Wisconsin.

(3) For the past two years there have been two separate agreements in force between the company and the Union, covering terms and conditions of employment, said Union [fol. 79] having been recognized by each of said contracts as the exclusive bargaining agent of said factory employes. The second of said contracts was canceled by notice of cancellation given by said Union, effective as of April 30, 1939. Following the receipt of said notice by the company, and for approximately three weeks prior to April 30, 1939, said parties collectively bargained with each other in an effort to agree upon terms of a new contract for the period commencing May 1, 1939, but without success.

(4) Commencing on or about May 10, 1939, said Union and some of its members went on strike, and have continued to strike from that time until the present. During the course of said strike, and continuing up to the present time, the said Union and a number of its members have engaged in, and have caused to be committed, the following unfair labor practices, to wit:

(a) Said Union and certain of its members have materially hindered and prevented, by mass picketing, the pursuit of lawful work and employment by many of the company's employes who desire to work; and have obstructed and interfered with entrance to and egress from the company's factory by employes and by others desiring to do business with the company, and have obstructed and interfered with the free and uninterrupted use of the streets and highways in and around the company's plant, all in violation of Section 111.06 (2) (f) of the Wisconsin Statutes.

(b) Said Union and certain of its members have engaged [fol. 80] in a concerted effort, and are now engaging in a concerted effort, to interfere with the company's production by acts and conduct other than leaving complainant's premises in an orderly manner for the purpose of going on strike, in violation of Section 111.06 (2) (h) of the Wisconsin Statutes.

(c) Said Union and certain of its members have coerced and intimidated various employes of the company and the families of various employes by threats and by causing physical violence and damage to the persons, the homes, and automobiles of various employes, and have injured and damaged the persons and property of said employes, all in violation of Section 111.06 (2) (a) of the Wisconsin Statutes.

(d) Said Union and certain of its members have coerced and intimidated, and are now engaging in, the coercion and intimidation of various employes of the company in the enjoyment of their legal rights guaranteed in Section 111.04 of the Wisconsin Statutes, and particularly in their legal rights to work, as well as their legal rights, in some instances to resign from said Union, and, in other instances, to refrain from joining said Union, all in violation of Section 111.06 (2) (a) of the Wisconsin Statutes.

(e) With the full knowledge of the Union several of its members have committed crimes and misdemeanors during the course of, and in connection with, the conduct of the pending strike by the Union, and the Union, with full knowledge of the commission of such crimes and misdemean- [fol. 81] ors, has failed in any way to restrain or to discipline any of its members committing such crimes and misdemeanors, but, on the contrary, said Union has aided, and is continuing to aid, such members by the furnishing, without cost to said members, of bail, attorney's services, and with intention to pay any fines that may be imposed upon them for the commission of such crimes and misdemeanors, all in violation of Section 111.06 (2) (j) of the Wisconsin Statutes.

(f) Said Union and certain of its members have co-operated in engaging in, promoting, or inducing picketing, and other overt concomitants of a strike, without having a majority of the employes of the company in the collective bargaining unit vote by secret ballot to call a strike, in violation of Section 111.06 (2) (e) of the Wisconsin Statutes.

Wherefore, complainant prays that it may have relief under and pursuant to Chapter 111 of the Wisconsin Statutes, to wit:

(a) That a hearing be had on this complaint at an early date.

(b) That the company have such relief as is directed and warranted under Chapter 111, including specifically the entry of proper orders:

(1) To protect the rights of the company to operate its business under conditions of law and order, and free from all mass picketing, threats, intimidation, force and coercion; and

(2) To protect the rights of such of its employes who desire to continue to work; and

[fol. 82] (3) To prevent the Union and its members, in the conduct of the strike, from intruding into the primary rights of such workers to earn a livelihood, and from intruding directly into the primary rights of the Company to lawfully transact its business, and from intruding directly into the primary rights of both the company and of such workers to engage in the ordinary affairs of life by any lawful means, free from molestation, mass picketing, threats, intimidation, interference, restraint or coercion; and

(4) To eliminate from this strike the conditions caused by the Union and its members, which amount to the primitive methods of trial by combat, which are directly declared to be contrary to the public policy of the State of Wisconsin by Section 111.01 (4) of the Wisconsin Statutes.

(c) That the Board ascertain and determine which of the members of said Union have committed, or have been parties to, any unfair labor practices, and to declare that such persons are no longer employes of the company as defined in Section 111.02 (3) (b) of the Wisconsin Statutes.

(d) That the Board make such further findings and such further order as complainant may be entitled to under the statutes of the State of Wisconsin in such case made and provided.

Allen-Bradley Company, by Lines, Spooner & Quarles, Its Attorneys.

* * * * * * *

[fol. 83] BEFORE WISCONSIN EMPLOYMENT RELATIONS BOARD

OBJECTION OF ALLEN-BRADLEY UNION TO JURISDICTION OF THE WISCONSIN EMPLOYMENT RELATIONS BOARD AND MOTION TO DISMISS COMPLAINT

(Omitting formal parts)

Now comes the above respondent, Allen-Bradley Local No. 1111, United Electrical, Radio & Machine Workers of America, appearing specially by Max E. Geline, its attorney, and objects to the jurisdiction of the Wisconsin Employment Relations Board in this action, and moves that the complaint in this action be dismissed upon the ground that the complainant, Allen-Bradley Company of Milwaukee, Wisconsin, is engaged in interstate and foreign commerce, and that by reason thereof is subject exclusively to the provisions of the National Labor Relations Act, an Act of Congress July 5, 1935, Chapter 372, 49 Statutes 349, U. S. Code, Title 29, sections 151 to 166, and to the exclusive jurisdiction of the National Labor Relations Board; and that the Wisconsin Employment Relations Board is without jurisdiction to proceed on the complaint filed under and pursuant to the provisions of the Wisconsin Employment Relations Act for the reason that said act is in conflict with the National Labor Relations Act, and that the Na-
[fol. 84] tional Labor Relations Act is exclusive and paramount with respect to the matters set forth in complainant's complaint.

Max E. Geline, Attorney for Respondent, Allen-Bradley Local No. 1111, United Electrical, Radio & Machine Workers of America.

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BEFORE WISCONSIN EMPLOYMENT RELATIONS BOARD

ANSWER OF ALLEN-BRADLEY UNION

(Omitting formal parts)

Now comes the respondent, and without in any manner, however, waiving its special appearance and without waiving its objection to the jurisdiction of the Wisconsin Employment Relations Board to proceed in said matter, and

further without waiving its motion to dismiss the complaint of the Allen-Bradley Company in the above matter on the ground that said Allen-Bradley Company is engaged in interstate commerce and is subject to the National Labor Relations Act, and that the Wisconsin Employment Relations Board has no jurisdiction to proceed in this matter under the Wisconsin Employment Relations Act, and expressly reserving the same, nevertheless answers said complaint as follows:

1. Answering paragraphs 1, 2 and 3, respondent admits the allegations therein contained.

[fol. 85] 2. Answering paragraph 4 and the subdivisions thereof, respondent admits that a strike commenced and called under the authority of said respondent Union started on May 10, 1939, by reason of differences between said parties.

3. Answering paragraph 4 (a), respondent denies the allegations therein contained.

4. Answering paragraph 4 (b), respondent admits that the strike now in progress between said parties has resulted in the interference with the company's production, but alleges that said concerted action of said respondent members was lawful in accordance with the rights of employees under the Wisconsin Anti-Injunction Act, and the constitutional rights of employees to free speech and other lawful conduct associated with the cessation of work due to a lawful labor dispute.

5. Answering paragraph 4 (c) the respondent denies that said Union has unlawfully committed the acts referred to.

6. Answering paragraph 4 (d), said respondent Union denies that its efforts to influence employees to remain united with said Union in a common bond of interest in order to obtain the objects for which said lawful labor dispute and strike was called, violates said section therein referred and further alleges that if the same constitutes a violation thereof, said section and the whole of said Wisconsin Employment Relations Act is void and unconstitutional in violation of the Constitution of the State of Wisconsin and of the United States, and particularly Article I, [fol. 86] Sections 1, 3 and 4 thereof, and of the Fifth and Fourteenth Amendments to the Constitution.

7. Answering paragraph 4 (e), said respondent denies the allegations thereof and further alleges that said respondent Union has aided members to obtain the defense to which they are entitled when accused of crime and has exercised such rights lawfully as it has a right to do under the laws of the State of Wisconsin and of the United States. That in so far as said Section 111.06 (2 a to j) makes the defense of members when accused of offenses an unlawful labor practice, such section is void and unconstitutional for the reasons aforementioned.

8. Answering paragraph 4 (f) said respondent denies the allegations thereof and further alleges that Section 111.06 (2 e) of the Wisconsin Statutes and the provisions thereof are void and unconstitutional.

As and for a separate defense, respondent alleges that the Wisconsin Employment Relations Act, Chapter 57 of the Laws of 1939, as applied to the respondent in this case, is in violation of the Constitution of the United States in that it deprives the respondent of its property and property rights without due process of law, and denies to said respondent the equal protection of the law, illegally interferes with interstate commerce, burdens and obstructs the free flow of interstate and foreign commerce and subjects the respondent and its members to harassing lawsuits and proceedings.

As and for further separate defense, respondent alleges [fol. 87] that said Wisconsin Employment Relations Act, Chapter 57 of the Laws of 1939, as applied to said Union and its members, is in violation of the Constitution of the State of Wisconsin and particularly Sections 1, 3 and 4 thereof.

Wherefore, respondent Union demands judgment dismissing the complaint on its merits.

Allen-Bradley Local No. 1111, United Electrical, Radio and Machine Workers of America, by Fred Wolter, President.

* * * * * * *

## Before Wisconsin Employment Relations Board

### Excerpts From Transcript of Hearing

(Omitting formal parts)

Pursuant to notice, this matter came on for hearing before the Wisconsin Employment Relations Board at the courthouse, Milwaukee, Wisconsin, on June 19, 1939, beginning at 10:30 a. m.

Present: Chairman Henry C. Fuldner, Commissioner L. E. Gooding, Commissioner R. Floyd Green.

Appearances:

Complainant, by Lines, Spooner & Quarles, by W. J. McGowan and Leo Mann, attorneys.
Respondent, by Max E. Geline, Attorney.

[fol. 88] Mr. Geline: If the Board please, my name is Max Geline. I am appearing specially on behalf of the respondent in this matter before the Wisconsin Employment Relations Board, and object to the jurisdiction of the Wisconsin Employment Relations Board to proceed in this matter, and move that the complaint be dismissed upon the ground that the complainant, Allen-Bradley Company, of Milwaukee, Wisconsin, is engaged in an interstate and foreign commerce, and that by reason thereof is subject exclusively to the provisions of the National Labor Relations Act, an act of Congress, July 5th, 1935, Chapter 372.49 Stats., 349 U. S. Code, Title 29, Sections 151 to 166, and to the exclusive jurisdiction of the National Labor Relations Board, and that the Wisconsin Employment Relations Board is without jurisdiction to proceed on the complaint filed under and pursuant to the provisions of the Wisconsin Employment Relations Act for the reason that said act is in conflict with the National Labor Relations Act, and that the National Labor Relations Act is exclusive and permanent with respect to the matters set forth in complainant's complaint. We are filing this special appearance and motion to dismiss for the reasons given, and I would like to have an opportunity to present a brief argument in support of our motion. It won't be long, but I think a record ought to be made on that.

Mr. Gooding: I presume that Mr. Mann will stipulate that this company is engaged in interstate commerce. There is no question about that.

Mr. Mann: I would say this, if the Board please, that so [fol. 89] far as volume business is concerned, and purchases made by the company from sources outside of the State of Wisconsin, and sales made by the company to purchasers outside of the State of Wisconsin, there is no question at all that the Company is also subject to the jurisdiction of the Federal Labor Relations Board, and we will concede on the record that there is no question of fact with respect to interstate commerce that need be gone into in the proof.

Mr. Geline: For purposes of the record, I have an affidavit which, in effect, alleges the interstate commerce character of the business of the complainant company. I wonder, however, if, for purposes of the record, the company couldn't make—well, if it's part of the record it may be sufficient. My thought was, if they would somehow provide as part of their complaint the interstate character of their business, it might make the issue a little clearer for purposes of the future proceedings, if any.

Mr. Mann: I'll state on the record, if the Board please, that if the National Labor Relations Board, pursuant to charges filed, if any were filed, assumed the jurisdiction by issuing a complaint against the Allen-Bradley Company charging it with unfair labor practices under the federal act, that the company would concede the jurisdiction of the National Act to proceed in connection with such a complaint in so far as matters of interstate commerce are concerned. Doesn't that do what you want, Mr. Geline?

Mr. Geline: Yes, I think that is satisfactory.

[fols. 90-95] Mr. Mann: Our point, of course, is that the jurisdiction of the federal board is not exclusive. • • •

Transcript continued.

Excerpt from Transcript.

Mr. Geline: I am filing this motion to dismiss based on the special appearance and objection to jurisdiction and in the event the Board rules against respondent on motion; then we will file an answer reserving our rights without waiving our special appearance to the merit of the complaint.

Mr. Gooding: If you just file the written motions that you have, Mr. Geline.

Mr. Geline: Yes. After the Board renders an order, or wishes to dispose of this motion in some way, then I will proceed to file the answer, if necessary.

Mr. Gooding: The motion is being denied at this time.

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[fols. 96-97] In Supreme Court of Wisconsin

Allen-Bradley Local No. 1111, United Electrical, Radio and Machine Workers of America, Fred Wolter, Esther Kusmierek, Esther Greenemeier, Sophie Koscierski, Frances Chandek, Agnes Tanko, Harry Rose, Dan Roknich, Tony Calabresa, Edward Okulski, Peter Blazek, Eilif Tomte, Edward Larson and Mike Demski, Appellants,

vs.

Wisconsin Employment Relations Board and Allen-Bradley Company, a Wisconsin Corporation, Respondents

Milwaukee Circuit Court, Opinion by Chief Justice Rosenberry

Judgment—January 7, 1941

This cause came on to be heard on appeal from the judgment of the Circuit Court of Milwaukee County and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the Circuit Court of Milwaukee County, in this cause, be, and the same is hereby, affirmed.

Justice Nelson took no part.

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[fol. 98] In Supreme Court of Wisconsin

[Title omitted]

Opinion—Filed Jan. 7, 1941

Appeal from a judgment of the circuit court for Milwaukee county: Otto H. Breidenbach, Circuit Judge. *Affirmed.*

Labor relations. This action was begun on March 14, 1940, by Allen-Bradley Local No. 1111, United Electrical,

Radio and Machine Workers of America, Fred Wolter, Esther Kusmierek, Esther Greenemeier, Sophie Koscierski, Francis Chandek, Agnes Tanko, Harry Rose, Dan Roknich, Tony Calabresa, Edward Okulski, Peter Blazek, Eilif Tomte, Edward Larson and Mike Demski, plaintiffs, against Wisconsin Employment Relations Board and Allen-Bradley Company, a Wisconsin corporation, defendants, to review an order of the Wisconsin Employment Relations Board, dated February 1, 1940. The Wisconsin Employment Relations Board, hereinafter referred to as the Board, answered the petition and filed a cross-petition praying that the order sought to be reviewed should be enforced as provided by law. The Allen-Bradley Company answered the petition and concurred in the prayer that the order sought to be set aside should be enforced. There was a trial and [fol. 99] judgment of the circuit court was entered on September 3, 1940, from which the plaintiffs appeal.

The Allen-Bradley Company is engaged in the business of manufacturing in the city of Milwaukee and it was stipulated by the parties that the Company is subject to the National Labor Relations Act. The Allen-Bradley Local No. 1111, United Electrical, Radio & Machine Workers of America, is a labor organization composed of the employees of the Allen-Bradley Company working in the city of Milwaukee.

Prior to the 1st day of May, 1939, there had been in force a contract between the company and the Union governing the terms and conditions of employment which contract was cancelled by the Union, cancellation to take effect as of the 30th day of April, 1939. On May 10, 1939, the Union by a secret ballot ordered a strike, pursuant to which a strike was called by the Union. After the strike was called on May 11, 1939, the Company continued to operate its plant for the duration of the strike which lasted about three months. Differences arose between the striking employes and the Company and those who continued to serve it. The Company thereupon filed a petition with the Board on July 27, 1939, charging the Union and certain of its officers and members with unfair labor practices. Notice of hearing was served which hearing was to be held on June 19, 1939. The Union answered, objecting to the jurisdiction of the Board, claiming that the matters in controversy were solely and exclusively within the jurisdiction of [fol. 100] the National Labor Relations Board. It then

answered generally reserving its objection to the jurisdiction. Hearing was had before the Board in which testimony was taken, and on the first day of February, 1940, the Board made its final order. The findings of fact made by the Board upon which its final order is based are not attacked on this appeal. Briefly, from the findings the following facts appear:

(a) Appellants engaged in mass picketing at all entrances to the premises of the Company for the purpose of hindering and preventing the pursuit of lawful work and employment by employees who desired to work.

(b) They obstructed and interfered with the entrance to and egress from the factory and obstructed and interfered with the free and uninterrupted use of the streets and sidewalks surrounding the factory.

(c) They threatened bodily injury and property damage to many of the employees who desired to continue their employment.

(d) They required of persons desiring to enter the factory, to first obtain passes from the Union. Persons holding such passes were admitted without interference.

(e) They picketed the homes of employees who continued in the employment of the company.

(f) That the Union by its officers and many of its members injured the persons and property of employees who desired to continue their employment.

(g) That the fourteen individual appellants who were striking employees, had engaged in various acts of misconduct. The facts relating to those were found specifically. [fol. 101] The acts consisted of intimidating and preventing employees from pursuing their work by threats, coercion, and assault; by damaging property of employees who continued to work; and as to one of them by carrying concrete rocks which he intended to use to intimidate employees who desired to work.

Based upon these findings the Board found as conclusions of law, that the Union was guilty of unfair labor practices in the following respects:

(a) Mass picketing for the purpose of hindering and preventing the pursuit of lawful work.

(b) Threatening employees desiring to work with bodily injury and injury to their property.

(c) Obstructing and interfering with entrance to and egress from the factory.

(d) Obstructing and interfering with the free and uninterrupted use of the streets and public roads surrounding the factory.

(e) Picketing the homes of employees.

As to the fourteen individual appellants, the Board concluded that each of them was guilty of unfair labor practices by reason of threats, assaults and other misdemeanors committed by them as set out in the findings of fact.

Based upon its findings of fact and conclusions of law the Board ordered that the Union, its officers, agents and members

(1) Cease and desist from:

(a) Mass picketing.

(b) Threatening employees.

(c) Obstructing or interfering with the factory entrances.

(d) Obstructing or interfering with the free use of public [fol. 102] streets, roads and sidewalks.

(e) Picketing the domiciles of employees.

The order required the union to post notices at its headquarters that it had ceased and desisted in the manner aforesaid and to notify the Board in writing of steps taken to comply with the order.

As to the fourteen individual appellants, the order made no determination based upon the finding that they were individually guilty of unfair labor practices.

As already stated, the controversy was brought before the circuit court on a petition to review. After hearing and argument in the circuit court, judgment was entered September 3, 1940, sustaining, confirming and enforcing the order of the Board, from which judgment plaintiffs appeal.

[fol. 103] ROSENBERRY, C. J.:

Upon this appeal no question is raised as to the constitutionality of the Wisconsin Employment Peace Act, pur-

suant to which the proceeding under consideration was had, except that it is in conflict with the National Labor Relations Act. Stated in the language of the brief, the appellants contend

"That the Wisconsin Act and the National Act both regulate the same subject; that the Wisconsin Act is so inconsistent with and in conflict with the National Act, in the public policy each Act seeks to enforce and in their major terms and provisions, that the two acts cannot consistently stand together, in so far as applicable to interstate commerce."

Appellants further contend that the finding of the Board that the fourteen strikers were guilty of unfair labor practices, is unconstitutional because it is so in conflict with regulations of the National Act governing the employe status of the fourteen strikers that the employe sections of the two acts cannot consistently stand together. While appellant used the term "unconstitutional," their argument is that the state law can have no application to a manufacturer subject to the National Labor Relations Act because the jurisdiction of the National Labor Relations Act has preempted the field of labor relations in cases where the employer is carrying on an industry in interstate commerce.

We enter upon an examination of the contentions of the plaintiffs and the arguments made in support thereof fully aware that we are dealing with one of the most difficult as well as delicate questions presented to the courts of this [fol. 104] country, to-wit: the delimitation of the power of the state and the federal government over a matter which is subject to some extent to their concurrent jurisdiction. The line of demarcation between the federal and state power is not a straight line. It is not only irregular but it is subject to change. The extent of state jurisdiction in some fields depends upon whether the field has been occupied by federal authority. Areas not thought to be within the scope of federal power originally may be brought within it by economic and social changes. Neither the state nor the federal constitutions change but the subject matter to which they are applied changes and so a new and different result is reached by the application of constitutional principles. See *Home Bldg. & Loan Assn. v.*

*Blaisdell* (1933), 290 U. S. 398, 88 A. L. R. 1519, Note, Governmental powers in peace-time emergencies.

Yet "the distinction between what is national and what is local in the activities of commerce is vital to the maintenance of our federal system." *Labor Board v. Jones & Laughlin* (1936), 301 U. S. 1, 30.

We shall first consider the purpose and scope of the National Labor Relations Act for the reason that wherever it applies, it excludes state action from the occupied field. Upon this proposition there is no disagreement. We shall also endeavor to determine when and under what circumstances it applies in a particular case.

While appellants recognize the fact that the National Labor Relations Act was enacted to remove burdens and prevent obstruction to the free flow of interstate commerce, they continually assert that the act confers substantive rights upon individual workers and the unions into which they are organized. Upon the basis of this proposition they argue that if there is any difference in the provisions [fol. 105] of the two acts as to what are unfair labor practices or the remedies which may be applied by the boards, there is a necessary and fatal repugnancy between the acts.

The Supreme Court of the United States in *Labor Board v. Jones & Laughlin, supra*, speaking of interstate commerce, said:

"Undoubtedly the scope of this power must be considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government. (p. 37)

"The theory of the act is that free opportunity for negotiation with accredited representatives of employees is likely to promote industrial peace and may bring about the adjustments and agreements *which the act in itself does not attempt to compel.** * * * The act does not interfere with the normal exercise of the right of the employer to select its employees or to discharge them. The employer may not, under cover of that right, intimidate or coerce

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* Here and throughout the opinion italics are by the writer.

its employees with respect to their self-organization and representation, and, on the other hand, the board is not entitled to make its authority a pretext for interference with the right of discharge when that right is exercised for other reasons than such intimidation and coercion." (pp. 45, 46)

It is manifest from these and other declarations of the United States Supreme Court in the consideration of the provisions of the National Labor Relations Act that the federal government can proceed only so far with the regulation of labor relations as is necessary to protect interstate commerce, remove burdens from it and prevent obstructions to it. The more study one gives to the National Labor Relations Act, the more he is moved to admire the consummate skill with which it was drafted for the declared purpose of regulating and protecting interstate commerce and yet at the same time leaving the field of proper state action unrestricted so far as possible. A reading of the cases which have arisen in the course of the administration [fol. 106] of the act, lead one to the conclusion that such defects as exist are defects of administration rather than defects in the law itself. The conduct of employees, although not denominated "unfair labor practices" by the act, is considered important in determining the character of the employers' acts by the National Labor Relations Board as well as the courts.

In the declaration of policy contained in the National Labor Relations Act, it is said:

"It is hereby declared to be the policy of the United States *to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.*"

By the National Labor Relations Act the Board is given two principal functions: the first is defined by sec. 9, which as enacted is headed "Representatives and elections"; the second is defined by sec. 10, which as enacted, is headed

"Prevention of unfair labor practices". In sec. 9 the Board is empowered after appropriate investigation and hearing to certify the name or names of representatives for collective bargaining of an appropriate unit of employees. By sec. 10 the Board is authorized to prevent by order, after hearing, and by a further appropriate proceeding in court, unfair labor practices as defined in sec. 8 of the act. The power of the Board to certify under sec. 9 the name or names of representatives for collective bargaining is not [fol. 107] involved in this proceeding. It is apparent, however, from a consideration of the provisions of sec. 9 that the right to determine and certify the name or names of a person or persons who shall represent an appropriate unit of employees for the purpose of collective bargaining, is vested exclusively in the board.

In *A. F. of L. v. Labor Bd.* (1940), 308 U. S. 401, the United States Supreme Court had before it for determination the question whether a certification made by the Board pursuant to the provisions of sec. 9 was subject to review by the Circuit Court of Appeals of the proper circuit. The Court held:

"The conclusion is unavoidable that Congress, as the result of a deliberate choice of conflicting policies, has excluded representation certifications of the Board from the review by federal appellate courts authorized by the Wagner Act except in the circumstances specified in sec. 9 (d). (Upon a petition for the enforcement or review of an order under sec. 10 (c), an order made pursuant to sec. 9 (c) may be reviewed.)"

By sec. 10 (a) it is provided that

"The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) *affecting commerce. This power shall be exclusive and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.*"

By sec. 10 (b) it is provided that whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the board or any agent or agency designated by the board for such purpose, *shall have power*

*to issue and cause to be served upon such person its complaint, stating the charges, etc.*

By sec. 10 (c), it is provided:

"If upon all the testimony taken the board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the board shall state its findings of fact and shall issue and cause to be served on such person an order requiring [fol. 108] such person to cease and desist from such unfair labor practices, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this act."

Under the provisions of the act, the power to forbid unfair labor practices and to require reinstatement of employees is vested exclusively in the Board and this power may not be affected by any other means of adjustment or prevention. It seems clear from these provisions that the right sought to be vindicated is the right to have interstate commerce free from burdens and obstructions. This is apparent not only from the language of the act but from the decision of the United States Supreme Court in *Amalgamated Utility Workers v. Consolidated Edison Co.* (1940), 309 U. S. 261, 84 L. Ed. 493. In that case, the union which had been a party to a labor dispute sought to have the Consolidated Edison Company and its affiliated companies adjudged in contempt for failure to comply with certain requirements of the decree made in the case to which it was a party. The Court of Appeals denied the application on the ground that "petitioner had 'no standing to press a charge of civil contempt, if contempt had been committed.'"

The Supreme Court of the United States cited excerpts from the committee reports of both houses of Congress and said:

"We think that the provision of the National Labor Relations Act conferring exclusive power upon the board to prevent any unfair labor practice, as defined,—a power not affected by any other means 'of prevention that has been or may be established by agreement, code, or law, or otherwise,' necessarily embraces exclusive authority to institute proceedings for the violation of the court's decree directing enforcement. The decree in no way alters, but confirms, the position of the Board as the enforcing authority. *It is the*

*Board's order on behalf of the public that the court en-*
[fol. 109] *force.* It is the Board's right to make that order that the court sustains. *The Board seeks enforcement as a public agent, not to give effect to a 'private administrative remedy.'* Both the order and the decree are aimed at the prevention of the unfair labor practice. If the decree of enforcement is disobeyed, the unfair labor practice is still not prevented. The Board still remains as the sole authority to secure that prevention."

The Court affirmed the decision of the Circuit Court of Appeals. See also *Fur Workers Union Local No. 72 v. Fur Workers Union,* 105 Fed. (2d) 1.

It is obvious that the purpose of the National Labor Relations Act is to promote the free flow of interstate commerce by the prevention of unfair labor practices as defined in the act. The regulation of interstate commerce is the constitutional basis of the power of Congress over labor relations. Prior to the adoption of the National Labor Relations Act and the decision of the United States Supreme Court sustaining it, many persons supposed labor relations to be a subject reserved to the states by the Tenth Amendment to the Constitution of the United States and that it was beyond the competency of Congress to deal with the subject. No doubt it is because of that fact that the act so meticulously delimits the power and authority of the Labor Board to matters which substantially affect interstate commerce, that being a subject over which Congress has, when it is exercised, exclusive jurisdiction. Hence Congress does not seek in the National Labor Relations Act to deal with labor relations generally. It deals with labor relations only so far as in its opinion it is necessary to protect interstate commerce from being impeded or obstructed by unfair labor practices on the part of employers. [fol. 110] The act prescribes a procedure for the protection and enforcement of the right of employees for self-organization, to bargain collectively, and to engage in collective activities as enumerated in sec. 7, for the purpose of protecting interstate commerce and to that end it confers large discretionary power upon the National Labor Relations Board. The rights enumerated in sec. 7 were in existence before the act was passed. If the act were to be repealed these rights would still exist. No one would more promptly assert that fact than the representatives of labor.

In *Amalgamated Util. W'rk's v. Consol. Edison Co., supra,* the Supreme Court of the United States, referring to sec. 7 of the Act, said:

"Neither this provision, nor any other provision of the Act, can properly be said to have 'created' the right of self-organization or of collective bargaining through representatives of the employees' own choosing. In National Labor Relations Bd. v. Jones & L. Steel Corp., 301 U. S. 1, 33, 34, 81 L. ed. 893, 909, 910, 57 S. Ct. 615, 108 ALR 1352, we observed that this right is a fundamental one; that employees 'have as clear a right to organize and select their representatives for lawful purposes' as the employer has 'to organize its business and select its own officers and agents;' that discrimination and coercion 'to prevent the free exercise of the right of employees to self-organization and representation' was a proper subject for condemnation by competent legislative authority. We noted that 'long ago' we had stated the reason for labor organizations,—that through united action employees might have 'opportunity to deal on an equality with their employer,' referring to what we had said in American Steel Foundries v. Tri-City Central Council, 257 US 184, 209, 66 L. ed. 189, 199, 42 S. Ct. 72, 27 ALR 360. And in recognition of this right, we concluded that Congress could safeguard it in the interest of interstate commerce and seek to make appropriate collective action 'an instrument of peace rather than of strife.' To that end Congress enacted the National Labor Relations Act."

In determining whether the Employment Peace Act is repugnant to the provisions of the National Labor Relations Act, it is of little moment whether we say that the National Act confers rights and privileges upon employees [fol. 111] or organizations of employees, or how we describe its effect upon employees. Both from the language of the act and the construction which has been placed upon it by the United States Supreme Court, it is apparent that the act operates effectively in a particular case only in the way and to the extent which is determined by the orders of the National Labor Relations Board. If an employer indulges in any of the unfair labor practices described in sec. 8 of the act, the sole redress of the employees is to charge the employer with such unfair labor practices before the Board. When such a charge is made, the Board may or may not

in its discretion decide to take jurisdiction of the controversy. Its determination will depend upon whether it finds the situation is such as to substantially affect interstate commerce. When it acts, the order of the Board determines the manner in which and the extent to which the act shall be effectively applied to the particular situation being dealt with. If the determination of the Board together with the force of public opinion is not sufficiently persuasive to bring about compliance with the Board's order, the Board may then apply to the proper circuit court of appeals for enforcement of the order. In this respect it differs materially from the transportation act of 1920, ch. 91, 41 Stat. 456. Under that act "The decisions of the Labor Board are not to be enforced by process. The only sanction of its decision is to be the force of public opinion invoked by the fairness of a full hearing, the intrinsic justice of the conclusion, strengthened by the official prestige of the Board, and the full publication of the violation of such decision by any party to the proceeding." *Labor Board Case*, 261 U. S. 72, 79. See *Penna. Brotherhood v. P. R. R. Co.*, 267 U. S. 219.

The vital question for consideration in this case is not whether there is repugnancy in the language of the two acts but is one of jurisdiction between the state and federal governments. Inasmuch as the National Labor Relations [fol. 112] Act depends for its effective operation upon the determination of the National Labor Relations Board, there can be no conflict between the acts until they are applied to the same labor dispute. They are upon two different planes. The National Labor Relations Act deals with labor relations only as a means of protecting interstate commerce. The Employment Peace Act deals with labor relations in the exercise of the police power of the state. To the extent that the orders of the National Labor Relations Board apply in a particular controversy, the jurisdiction of state authorities both administrative and judicial, is ousted. When under the facts of a particular case interstate commerce is substantially affected and the National Labor Relations Board takes jurisdiction, its determinations are final and conclusive, the determination of any state authority to the contrary notwithstanding.

In this case the employer has never been charged with an unfair labor practice nor has the National Labor Relations Board ever been requested to determine who is the

proper bargaining representative. Consequently the National Labor Relations Act has never been applied to the labor dispute here under consideration and it may never be applied, depending upon the exercise of the discretion of the National Labor Relations Board. Therefore, there can be no conflict of jurisdiction between state and federal authority in this case. This conclusion does not depend upon the language of the two acts. If the language of the Employment Peace Act was identical with that of the National Labor Relations Act and in a particular case the [fol. 113] National Labor Relations Board took jurisdiction, the jurisdiction of the Wisconsin Employment Labor Relations Board would be ousted notwithstanding the identity in language of the two acts and the determination made by the National Labor Relations Board would be controlling. The action of Congress leaves to the state full authority to deal with labor relations generally. Congress exercises its power in the interest of interstate commerce. With that subject the state has nothing to do. Its power to regulate labor relations is derived from an entirely different source, —the power to promote the peace, morals, health, good order and general welfare of the people as a whole. It may not, however, in the exercise of that power encroach upon the federal domain.'

The appellants, while asserting that they do not do so, in fact argue this case as if the failure of Congress to define unfair labor practices of employees operates as a license to employees in the enforcement of their demands to do any or all of the things declared by the Employment Peace Act to be unfair labor practices. This argument stems from the idea that Congress is regulating labor relations instead of interstate commerce. In *National Labor Relations Bd. v. Fansteel Metallurgical Corp.* (1939), 306 U. S. 240, 256, the Supreme Court of the United States said:

"Here the strike was illegal in its inception and prosecution. As the Board found, it was initiated by the decision of the union committee 'to take over and hold two of the respondent's key buildings'. It was pursuant to that decision that the men occupied the buildings and the work stopped. This was not the exercise of the 'right to strike' to which the act referred. It was not a mere quitting of work and statement of grievances in the exercise of pres- [fol. 114] sure recognized as lawful. It was an illegal

seizure of the buildings in order to prevent their use by the employer in a lawful manner and thus by acts of force and violence to compel the employer to submit. *When the employees resorted to that sort of compulsion they took a position outside of the protection of the statute and accepted the risk of the termination of their employment upon grounds aside from the exercise of the legal rights which the statute was designed to conserve.* • • •

"We repeat that the fundamental policy of the act is to safeguard the rights of the self-organization and collective bargaining and thus, by the promotion of industrial peace, to remove obstructions to the free flow of commerce as defined in the act. *There is not a line in the statute to warrant the conclusion that it is any part of the policies of the act to encourage employees to resort to force and violence in defiance of the law of the land. On the contrary, the purpose of the act is to promote peaceful settlements of disputes by providing legal remedies for the invasion of the employees rights.*"

It is considered that this determination by the Supreme Court of the United States disposes of the contention made.

One of the principal contentions of appellants here is that fourteen strikers who were found guilty of unfair labor practices (acts of violence and coercion) are, under the terms of the National Labor Relations Act, still employees of the Allen-Bradley Company; that because of the finding of the Wisconsin Employment Relations Board that the employees were guilty of an unfair labor practice, that relationship is severed, consequently there must be a conflict between state and federal authority. There are two answers to this contention, first, the National Labor Relations Act has never been applied to the labor dispute here under consideration; second, a mere finding of the Wisconsin Employment Relations Board does not affect the employer and employe relationship. Appellants' contention is based upon sec. 111.02 (3) of the Wisconsin Employment Peace Act. That part which is material is as follows:

[fol. 115] "The term 'employee' shall include any person, other than an independent contractor, working for another for hire in the state of Wisconsin in a non-executive or non-supervisory capacity, and shall not be limited to the employees of a particular employer unless the context clearly

indicates otherwise; and shall include any individual • • • (b) who has not been found to have committed or to have been a party to any unfair labor practice hereunder."

Considering the language of this section by itself, it may warrant the interpretation put upon it by appellants, that is, that a mere finding is sufficient to deprive the employee of his status. However, when considered in connection with other provisions of the act, we think it cannot be so interpreted. That part of sec. 111.07 (4), which is material here, is as follows:

"Final orders may dismiss the charges or require the person complained of to cease and desist from the unfair labor practices found to have been committed, suspend his rights, immunities, privileges, or remedies granted or afforded by this chapter for not more than one year, and require him to take such affirmative action, including reinstatement of employees with or without pay, *as the Board may deem proper.*"

The continuation of the status of an employee is certainly a right or privilege. The act specifically provides how it shall be terminated, that is, by order of the Board.

Sec. 111.07 (8), stats., provides:

"Within thirty days from the date of the order of the board as a body, any party aggrieved thereby may petition the circuit court for the county in which he or any party resides or transacts business, *for review of the same.*"

No provision is made for reviewing the findings. Under sec. 111.07 (7 & 8), Employment Peace Act, the Court has power only "to confirm, modify or set aside the order of the board and enter an appropriate decree". It examines the record to ascertain whether the findings are supported by the evidence. Its judgment may operate only upon the provisions of the order. It is considered, in view of the large discretionary power committed to the Board, that the act affects the rights of parties to a controversy pending before the Board only in the manner and to the extent prescribed by the order. As pointed out in *Hotel & Restaurant* [fol. 116] *Employees Assn., Local 122, et al. v. Wisconsin Employment Relations Bd. et al.*, — Wis. —, — N. W. —, the jurisdiction of the Wisconsin Board over labor disputes is

to some extent concurrent, it being provided in sec. 111.07 (1), Stats.:

"But nothing herein shall prevent the pursuit of legal or equitable relief in courts of competent jurisdiction • • •

(4) Final orders may dismiss the charges", etc.

As already stated, the manner and the extent to which the act shall apply in a particular case pending before it is committed to the discretion of the Board. Its commands are found in the order, which determines the status and obligations of all parties to the controversy, not in the findings. In the Board's order under review, there is no provision which suspends the status as employees of the fourteen individual appellants found guilty of unfair labor practices. In this case for the reasons stated there is no conflict in regard to employe status.

In response to the argument made by appellants that there is a conflict between the two acts because of the difference in definitions, we point out that these definitions apply only for the purposes of the act in which they are found. In sec. 2 of the National Labor Relations Act certain terms used in the act are defined. That section begins "When used in this act", the various terms defined mean thus and so. Definitions of terms in the Employment Peace Act are found in sec. 111.02. That section begins: "When used in this chapter", the term defined includes or means thus and so. In controversies in which the National Labor Relations Board takes jurisdiction, it will in the course of its determination apply the definitions contained in the National Labor Relations Act. When the Wisconsin Employment Relations Board takes jurisdiction of a labor dispute it will apply the definitions contained in the Employ- [fol. 117] ment Peace Act in formulating its determinations. Conflict between the two acts can arise only with respect to orders issued by each of the Boards dealing with the same situation. No matter how arrived at by the boards there can be no conflict if there is none in the orders dealing with the same labor dispute. For the reason stated we discover no conflict in the two acts on account of the difference of definitions of the terms to be found in them.

When appellants concede that the state may punish unlawful acts of strikers who are engaged in striking because of unfair labor practices of their employer, they con-

cede the power of the state to deal with some aspects of every labor dispute. In the case of the National Labor Relations Act the jurisdiction of the federal authority is not aroused until such a situation has arisen that interstate commerce is impeded or obstructed. On the other hand, state action is regulatory in its nature and is designed to bring about industrial peace, regular and adequate income for the employee and unintérrupted production of goods and services for the promotion of the general welfare. The federal act deals with a situation that has arisen. The state act seeks to forestall action which may lead to disorder and loss of life and property.

Appellants specified nine ways in which the state and federal acts conflict but as already pointed out, these conflicts do not exist until the National Labor Relations Act is applied by the National Labor Relations Board in a particular case. As has already been pointed out state power is not destroyed by federal action, it is merely suspended in a particular case. If a man who owns and pos- [fols. 118-119] sesses a tool and is forbidden to use it, he still has the tool. He is deprived not of the tool but of the power to make use of it. The state is not deprived of its power to deal with labor relations by the National Labor Relations Act. Its power is suspended so far as is necessary to give effect to that act.

We might have disposed of this case when we reached the conclusion that the Federal Act not having been invoked with respect to the labor dispute here under consideration, there can be no conflict between the two acts. We have thought it best, however, in the interest of certainty to deal specifically with certain questions raised by appellants. If the National Labor Relations Act is repealed, the power of the state over labor relations will be the same as it was before the act was passed. If the Interstate Commerce Act should be repealed the state's power over interstate commerce would not be enlarged. It might have greater latitude in dealing with intra-state commerce but its jurisdiction would be over intra-state commerce, not over interstate commerce.

We wish to point out again that the court has no jurisdiction or authority to pass upon the policy involved in this or any other act. Questions of public policy are primarily for the legislature. If the provisions of this act are

too restrictive, as claimed in the brief, the court may not deal with that feature of the act if it is otherwise within the field of constitutional legislative action. In upholding the law against attacks upon its validity on the ground that it is unconstitutional, the court neither commends nor criticizes the public policy involved. If the act is too restrictive, the remedy lies with the legislature and not with the court.

*By the Court.*—Judgment affirmed.

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[fol. 120] IN SUPREME COURT OF WISCONSIN

[Title omitted]

MOTION FOR REHEARING—Filed January 21, 1941

Now come the appellants above-named by Max E. Geline, their attorney, and respectfully move the Court for a rehearing in the above-entitled matter, for, among others, the following reasons, to-wit:

1. The Court erred in ruling that the National Labor Relations Act was not presently effective as to the parties to this action because no order has been issued by the National Labor Relations Board and that, therefore, no issue of repugnance is involved in the instant case in the terms and provisions of the two Acts.

2. The Court erred in construing that the National Labor Relations Act grants to the National Labor Relations Board the discretion to take jurisdiction of any controversy involving the commission of unfair labor practices by an employer against employees as defined in said Act and in, further, assuming that if the National Labor Relations [fol. 121] Board does not act in a matter, the Act, itself, is not applicable to employers and employees engaged in interstate commerce.

3. The Court erred in ruling that—

"In the case of the National Labor Relations Act the jurisdiction of the Federal authority is not aroused until such a situation has arisen that interstate commerce is impeded or obstructed."

4. The Court erred in ruling that the conflict between the State Act and the Federal Act does not exist until the National Labor Relations Act is applied by the National Board in a particular case.

5. The Court erred in construing that the "Final Order" subject to review did not include those portions of the "Final Order" of the Board containing the ruling that the fourteen appellants had committed unfair labor practices and, further, erred in assuming that it could only review that portion of the "Final Order" which was designated "Order".

6. The Court erred in ruling that the action of Congress in enacting the National Labor Relations Act leaves to the State full authority to deal with labor relations of employers engaged in interstate commerce, generally, without regard to whether the State law regulating the same subject as the Federal law is inconsistent with or in conflict with the Federal law.

7. The Court erred in asserting that Congress, in enacting the National Labor Relations Act, did not regulate labor relations as such.

8. The Court erred in ruling that in order for the appellants to sustain a loss of employee-status for purposes of protection against employer unfair labor practices and, [fol. 122] further, for the purpose of participating as employees in all questions of collective bargaining governed by the Wisconsin Act, that it was necessary for the Wisconsin Board to order the termination of the employee-status for such purposes after finding that the appellant employees had committed unfair labor practices in the course of the strike.

9. The Court erred in assuming that the employer-employee relationship is severed by the commission of unfair labor practices when, in fact, the only real effect of enforcement of the statute against one committing unfair labor practices is to terminate his employee status for all purposes of the Wisconsin Act only.

10. The court erred in quoting the language in sec. 111.02 (3) of the Wisconsin Act, material to the issues of this case, by omitting the clause:

"whose employment has ceased solely as a consequence of or in connection with any current labor dispute or because of any unfair labor practice on the part of an employer",

in designating the individuals covered by sec. 111.02 (3) (b).

11. The Court erred in construing the Wisconsin Act to permit the exercise of discretion provided for in sec. 111.07 (4) of the Act with respect to strikers whom the Board has found to have committed an unfair labor practice.

12. The Court erred in assuming that the termination of the employee-status of strikers for purposes of the Wisconsin Act, who committed an unfair labor practice under the Act, is one and the same as the termination of the actual employment relationship for all purposes.

13. The Court erred in failing to rule that the employee-[fol. 123] status of the fourteen individual appellants for the limited purposes of the Wisconsin Act was terminated.

14. The Court erred in ruling that conflict between the two Acts can arise only with respect to orders issued by each of the Boards dealing with the same situation.

15. The Court erred in ruling that appellants are without standing to raise constitutional issues arising from conflict between the two Acts because the National Act constitutes a public law and does not confer a private right of action.

16. The Court erred in failing to consider the question of conflict between the terms and provisions of the two Acts insofar as the Wisconsin Act attempts to regulate the labor relations of employers, employees and labor unions engaged in interstate commerce.

17. The Court erred in ruling that the conflict between the State and Federal Acts as to any particular case does not exist until the National Act is applied by the National Labor Relations Board in a particular case.

18. The Court erred in ruling that in the event of conflict between the two Acts so that the two Acts cannot consistently stand together, the State power is not destroyed by reason of the Federal Act but is merely suspended in a particular case.

19. The Court erred in failing to apply simple, clear, fundamental constitutional principles regulating the authority

of the State and Federal Governments to regulating the same subject, to the issues raised in this case.

And for such other reasons and other grounds as will be set forth in the printed argument hereinafter to be filed for the appellants in support hereof.

Max E. Geline, Attorney for Appellants.

Dated, January 20th, 1941.

[fol. 124] The undersigned hereby acknowledge receipt of copy of Petition for Rehearing in the above matter.

Dated this 21st day of January, 1941.

John E. Martin, Atty. Gen. *By N. S. Boardman, Asst. Atty. Gen.* Attorneys for Respondent, Wisconsin Employment Relations Board.

[fols. 125-126] The undersigned hereby acknowledge receipt of copy of Petition for Rehearing in the above matter.

Dated this 24th day of January, 1941.

*Lines, Spooner & Quarles,* Attorneys for Respondent, Allen-Bradley Company.

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[fols. 127-132] In Supreme Court of Wisconsin

[Title omitted]

Order Denying Motion for Rehearing—March 11, 1941

The Court being now sufficiently advised of and concerning the motion of the said Appellants for a rehearing in this cause, it is now here ordered and adjudged by this court that said motion be, and the same is hereby, denied, with $25.00 costs and costs of motion.

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[fol. 133] Supreme Court of the United States

[Title omitted]

Assignment of Errors and Prayer for Reversal—Filed June 2, 1941

The appellants above named in accordance with Rule 9 of the Revised Rules of the Supreme Court of the United

States, assign the following errors in the record and proceedings in the Supreme Court of the State of Wisconsin in the above entitled cause:

1. The Supreme Court of the State of Wisconsin erred in failing to rule that the Wisconsin Employment Peace Act on its face and as construed and applied to the appellants, is repugnant to the National Labor Relations Act, and therefore void and unconstitutional under Article I, Section 8 and Article II, Section 6 of the Constitution of the United States.

2. The Supreme Court of the State of Wisconsin erred in ruling and construing that the Wisconsin Employment Peace Act (C. 571 Laws of 1939, Wisc. Stat. (1939) c. 111) could be enforced as to parties subject to the National Labor Relations Act.

[fol. 134] 3. The Supreme Court of the State of Wisconsin erred in construing the National Labor Relations Act as not being applicable to the appellants until and unless an order is issued by the National Labor Relations Board in a proceeding before it to which the employer, employees and the Union herein are parties.

4. The Supreme Court of the State of Wisconsin erred in ruling that jurisdiction of the federal authority under the National Labor Relations Act is not aroused until such a situation has arisen that interstate commerce is impeded and obstructed.

5. The Supreme Court of the State of Wisconsin erred in ruling that the final order of the Wisconsin Employment Relations Board finding the fourteen individual appellants herein guilty of unfair labor practices did not deprive said appellants of the protection against employer unfair labor practices and of the right to collective bargaining and other concerted action for their mutual aid and protection.

6. The Supreme Court of the State of Wisconsin erred in ruling that Sec. 111.02, Subsection 3, (b) of the Wisconsin Employment Peace Act is not in conflict with Section 2, Subsection 3 of the National Labor Relations Act, as applied to the individual appellants in this case and the appellant union and therefore is void and unconstitutional by reason of such conflict.

7. The Supreme Court of the State of Wisconsin erred in failing to rule that the Wisconsin Employment Peace Act on its face and as construed and applied to the appellants is void and unconstitutional for the reason that the said Wisconsin Act and the National Labor Relations Act are both regulatory of the same general subject matter of employer-employee relations and both regulate collective bargaining relations between employers and employees, and that Congress in enacting the said National Labor Relations Act has preempted the subject covered by said Act in the exercise of its powers to regulate interstate commerce.

[fols. 135-136] 8. The Supreme Court of the State of Wisconsin erred in ruling that appellants are without standing to raise constitutional issues arising from the conflict between the two aforesaid federal and state labor relations acts.

9. The Supreme Court of the State of Wisconsin erred in ruling that the Wisconsin Employment Peace Act does not stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress in enacting the National Labor Relations Act pursuant to its constitutional power to regulate commerce between the states.

*Prayer for Reversal*

For which errors, the appellants pray:

1) That the decision of the Supreme Court of the State of Wisconsin filed January 7th, 1941 in the above entitled cause be reversed;

2) That the final judgment issued pursuant to said decision be reversed;

3) That a judgment be rendered in favor of the appellants and for costs.

Lee Pressman, Joseph Kovner, Anthony Wayne Smith, Attorneys for Appellants.

Of Counsel: Max E. Geline.

[fol. 137] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING APPEAL—June 2, 1941

The Appellants in the above-entitled matter, having prayed for an allowance of an appeal in this cause to the Supreme Court of the United States from the judgment made and entered in the above entitled matter by the Supreme Court of the State of Wisconsin on the 7th day of January, 1941, and from each and every part thereof; and

The appellants having presented their petition for appeal, assignment of errors, prayer for reversal, and statement of jurisdiction, pursuant to the statute and rules of the Supreme Court of the United States in such cases made and provided:

It Is Now Ordered That an appeal be, and the same is, hereby allowed to the Supreme Court of the United States from the Supreme Court of the State of Wisconsin in the above-entitled cause, as provided by law; and

It Is Further Hereby Ordered That the Clerk of the Supreme Court of the State of Wisconsin shall prepare and [fols. 138-209] serve a transcript of the record, proceedings, and judgment in this cause and transfer the same to the Supreme Court of the United States so that he shall have the same in said Supreme Court within 40 days of this date; and

It Is Further Hereby Ordered That security for costs on appeal be fixed in the sum of One Hundred ($100) Dollars.

Dated this 2nd day of June, 1941.

Marvin B. Rosenberry, Chief Justice of the Supreme Court of the State of Wisconsin. (Seal.)

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[fol. 210] SUPREME COURT OF THE UNITED STATES

No. 252

[Title omitted]

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED—Filed July 11, 1941

Now come the appellants in the above entitled cause and state that the points upon which each and all intend to rely in this Court are as follows:

1. The Wisconsin Employment Peace Act, (Ch. 57, Laws of 1939, Wis. Stat. 1939, Ch. 111) and the National Labor Relations Act are general public laws enacted respectively by the Wisconsin Legislature and Congress for the purpose of regulating the same subject of labor relations and collective bargaining.

2. The Wisconsin Act, on its face, and as construed and applied to interstate commerce, is repugnant to the National Act and therefore, void and unconstitutional.

3. Congress, in enacting the National Labor Relations Act pursuant to its powers under the commerce clause, has [fol. 211] pre-empted the subject of labor relations insofar as governed by the National Act; the states, are therefore barred from enforcing a Labor Relations Act governing the same subject as to employers, employees, and labor organizations which are subject to the jurisdiction of the National Act.

4. If the states may enact labor relations legislation governing the same subject as the National Act, pursuant to the police power, the Wisconsin Employment Peace Act, involved in this appeal, is nevertheless void and unconstitutional as applied to interstate commerce because the State Act, in its provisions and public policy, is so in conflict with and repugnant to the public policy and provisions of the National Act that the two acts cannot consistently stand together.

5. The Wisconsin Act is an integrated and indivisible plan of regulation of the subject of labor relations and cannot be separated for the purpose of upholding some portion of the Final Order issued as valid and constitutional as applied to appellants.

6. The Wisconsin Employment Relations Board was wholly without jurisdiction to issue a valid order; consequently, the Final Order in this case is void and of no effect.

7. The Final Order dated February 1, 1941, as construed and enforced in the Wisconsin Court against appellants as striking employees, is repugnant to and in conflict with the provisions of Section 2 (3) of the National Act.

8. Section 111.02 (3) and Section 111.06 (2), Wisconsin Act, as applied and enforced in the Final Order are repug- [fol. 212] nant to and in conflict with the provisions of Section 2 (3) and the public policy set forth in Section 1 of the National Act.

9. The Wisconsin Supreme Court, in its decision of January 7, 1941, erred in its construction of the purpose, applicability to the parties and effect of the National Labor Relations Act on the right of the State Board to enforce the State Act.

10. The Final Order of the Wisconsin Board, confirmed by the Wisconsin Courts, would permit the appellee, Allen-Bradley Company, to ignore the statutory protection presently existing in favor of the striking employees under the National Labor Relations Act.

11. The Final Order of the Wisconsin Board and the Wisconsin Employment Peace Act as applied to interstate commerce stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress in enacting the National Labor Relations Act pursuant to its constitutional power to regulate commerce between states.

Appellants further state that only the following parts of the record as filed in this court are deemed necessary to be printed for the consideration of the points set forth above, viz:


| *Title of Paper* | *Record Page* |
|---|---|
| Petition for Review of Final Order | 2-19 |
| Final Order of Wisconsin Board, dated February 1, 1940 | 20-26 |
| Answer and Cross Petition for Enforcement of Final Order of Wisconsin Board | 26-33 |
| Answer of Allen-Bradley Company | 50-52 |
| Decision of Circuit Court Judge, Otto H. Breidenbach, July 16, 1940 | 53-55 |
| Final Judgement of Circuit Court | 56-58 |
| [fol. 213] Complaint of Allen-Bradley Company against Allen-Bradley Union | 78-82 |
| Objections of Allen-Bradley Union to jurisdiction of Wisconsin Board and Motion to Dismiss Complaint | 83-84 |
| Answer of Allen-Bradley Union filed in proceedings before Wisconsin Board | 85-87 |
| Excerpts from Transcript | 87-90 |
| Judgment of Wisconsin Supreme Court | 96 |
| Opinion of Wisconsin Supreme Court | 97-118 |
| Motion for re-hearing in Wisconsin Circuit Court | 119-125 |
| Denial of Motion for re-hearing | 127 |

Dated, Milwaukee, Wisconsin, the eighth of July, 1941.

Lee Pressman, John Kovner, Anthony Wayne Smith, Attorney- for Appellants. Max E. Geline, Attorney for Counsel.

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Endorsed on Cover: Enter Lee Pressman. File No. 45,580. Wisconsin Supreme Court, Term No. 252. Allen-Bradley Local No. 1111, United Electrical, Radio and Machine Workers of America, et al., Appellants, vs. Wisconsin Employment Relations Board and Allen-Bradley Company. Filed July 10, 1941. Term No. 252, O. T. 1941.